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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975.

No. 75-951

NUCLEUS OF CHICAGO HOMEOWNERS ASSOCIATION, ET AL.,

Petitioners,

vs.

CARLA A. HILLS, ET AL.,

Respondents.

BRIEF OF CHICAGO HOUSING AUTHORITY RESPONDENTS IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI.

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THE ISSUE PRESENTED.

Whether certiorari should be granted in a case where the factual predicate for petitioners' legal arguments has been found to be without merit by both courts below.

STATEMENT OF THE CASE.

Plaintiffs[1] instituted the instant action to enjoin the construction of public housing[2] in their communities on the ground that

1. For convenience all parties are referred to as they were in the trial court.

2. CHA submitted development programs which were to be funded by HUD in accordance with court orders in *Gautreaux* v. *Chicago Housing Authority*, 304 F. Supp. 736 (N. D. Ill. 1969) and *Gautreaux* v. *Romney*, 363 F. Supp. 690 (N. D. Ill. 1973).

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defendants had failed to file an environmental impact statement as required by Section 102(2)(c) of the National Environmental Protection Act (NEPA), 42, U. S. C. A. § 4332(2)(c). Plaintiffs are 600 plus individuals and 25 or more local community organizations but this is not a class action. (Tr. 2045) The Defendants are the Department of Housing and Urban Development (HUD), its Secretary, the Chicago Housing Authority (CHA), its Commissioners and Executive Director.

The gist of plaintiffs' case is that the adverse social characteristics of the families who will become tenants in scattered-site public housing units will have a negative impact on the quality of life in their neighborhoods. Plaintiffs allege that they are members of the "middle class and/or working class", which social classes, as compared to the kind of families that live in public housing, allegedly:

> (a) " . . . emphasize obedience and respect for lawful authority and have a much lower propensity toward criminal behavior and acts of physical violence."
>
> (b) ". . . possess a high regard for the physical and aesthetic improvement of real and personal property." (¶ 13, Cts. I and II)

Plaintiffs then assert that, as a "statistical whole", or on the average, members of CHA tenant families, as "compared to the social class characteristics of the plaintiffs", possess:

> (a) ". . . a higher propensity toward criminal behavior and acts of physical violence than do the social classes of the plaintiffs."
>
> (b) ". . . a disregard for the physical and aesthetic maintenance of real and personal property which is in direct contrast to the high level of care with which the plaintiffs' social classes treat their property."
>
> (c) ". . . a lower commitment to hard work for future oriented goals with little or no immediate reward than do the social classes of the plaintiffs." (¶ 20, Cts. I and II)

Plaintiffs then assert that by placing housing populated by the kinds of people which currently reside in CHA housing in plain-

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tiffs' communities there will be an adverse impact upon those communities. (¶ 20, Ct. I, ¶ 23 Ct. II)

To support their position plaintiffs offered testimony by two sociologists. Neither had studied or interviewed the actual plaintiffs in this case to see if plaintiffs were in fact members of the social class in which they claimed membership. Nor did plaintiffs' sociologists interview or study the then current CHA tenants, nor did they interview any CHA personnel who are in daily contact with CHA tenants. The sociologists, relying solely on statistical data referring to average characteristics of groups, opined that plaintiffs possessed the social characteristics they alleged they possessed and also that CHA tenants to be placed in scattered site low income public housing possessed the social characteristics attributed to them by plaintiffs.

No evidence was introduced about *plaintiffs'* mean income, *plaintiffs'* number of incomplete families, or their employment or unemployment or educational level, all of which plaintiffs' sociologists deemed crucial in the evaluation of social class. (Tr. 348, 349, 359, 434, 443) Each of plaintiff's sociologists admitted that he did not know the socio-economic class of the prospective tenants of the proposed scattered site family public housing because, of course, they did not yet exist. (Tr. 1872, 1272, 1317)

It was stipulated that "the *majority* of the residents of the CHA do not engage in acts of physical violence or property damage." (Tr. 1159, emphasis added) Moreover, one sociologist testified that not all poor people suffer from "social disorganization" (Tr. 629), and that "not all socially disorganized families engaged in anti-social conduct." (Tr. 630) In fact, he testified that "some socially disorganized families do possess [middle class] values to some extent." (Tr. 1143) He also testified that poor people who are black—and CHA tenants are 82% black according to Plaintiffs' Ex. 43—demonstrate a special affinity for middle class values when he said that "the overwhelming majority of the black population [in the Chicago

Metropolitan Region] shares those [middle class] values [even] those whose income[s] [are] substantially under $8,000.00" (Tr. 1142)

Since this matter involves a future scattered site program, CHA presented evidence of how it selected tenants for its existing scattered site units and its experience with their operation.

Wendell L. Johnson, Jr., a Housing Manager for CHA, managing a total of 3,586 apartments, testified how CHA selected the tenants for the scattered site low rise public housing units at 1911 North Sedgwick and 420 West North Avenue, the "Lincoln Park scattered sites." (Tr. 2752) He stated that CHA carefully scrutinized its files for evidence of adverse social behavior by members of the applicant families and examined rent payment records. He also testified that CHA tried to place families that had two parents present or at least an older boy who could handle the chores required of tenants in low-rise scattered public housing. (Tr. 2780-81) In addition, all of the homes of applicants in the Lincoln Park sites were visited by CHA Central Rental office staff. (Tr. 2783)

Mr. Johnson stated that since the tenants moved into the Sedgwick and North Avenue sites in 1969 (Tr. 2754) CHA had received only 3 reports of incidents which were all minor and quickly resolved.[3] (Tr. 2808-9, 2811-12)

Harry J. Schneider, Executive Director of CHA, testified that, in the case of selecting tenants from applicants for future

3. One involved the son of one family, not himself an authorized tenant, who reportedly was using some kind of narcotic drug. Johnson promptly reported this to the police, who apprehended the young man; Johnson then warned the tenant that she was responsible for the behavior of visitors and that any future repetition of such behavior would result in termination of the lease. That ended that. The second "incident" involved a dispute between some tenants over washing machines, which was resolved "without animosity". The third involved a dog brought home by one of the sons of the families contrary to CHA regulations. The family was told that unless they got rid of the dog, their lease would be terminated; the dog left.

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scattered site public housing the CHA wil continue to "be much more selective;" he said that the CHA vill "select families that have the ability to properly maintain heir premises and to conduct themselves in a manner that woud be construed as being good neighbors" (Tr. 2257) and tha the CHA would "home visit all applicants prior to any decisons as to whether or not they would be accepted for housing." (Tr. 2258)

CHA attempted to have various CHA management personnel testify as to their experience as to the propesity of CHA residents for personal and property violence. However, plaintiffs successfully objected to these witnesses giving such opinions on the grounds they were not qualified to do so.[4]

Their testimony is part of the record as offrs of proof. They testified that the kind of people who reside in CHA have no more or less propensity for physical and property violence than other people in other neighborhoods; and that only 10 to 12 per cent of CHA tenants engage in such activity. (Tr. 2382-83, 2386, 2833, 2838)[5]

It was on the basis of this record that the district court concluded that plaintiffs had failed to prove heir case. In its opinion (A. 8)[6] the district court stated plaintiffs had failed to prove that individual prospective tenants behavior will be "identical, or even similar, to other individuals in the same social or economic class." (A. 12)

The district court concluded "that the evidence does not support the proposition that prospective tenant of public housing will significantly affect the environment." (A. 12) The evidence

4. It should be noted, however, that it is these same management people that Petitioners now claim should have been consulted in evaluating the impact of scattered site public housing in the target site areas.

5. Their opinion testimony is contained in the Appendix attached hereto.

6. Reported at 372 F. Supp. 147 (N. D Ill. 1973). "A" references to the District Court's and Court of Appeals' opinions are to the Appendix of plaintiffs' petition.

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did "not support the allegation in the complaint of differing socio-economic characteristics of the plaintiffs as contrasted with prospective tenants of public housing" because there was "no evidence to support plaintiffs' allegations that prospective tenants of public housing are more likely to engage in anti-social conduct than present community residents" nor was there "evidence of the social characteristics of the individual plaintiffs, none having testified." (A. 12-13)

It was on the basis of all of these findings of fact that the district court concluded that the construction of the scattered site public housing units would not significantly affect the environment and that the defendants' actions were not in violation of the National Environmental Protection Act (NEPA). Thus, the court entered the judgment for defendants from which plaintiffs appealed.

The Court of Appeals for the Seventh Circuit entered an opinion on October 6, 1975, affirming the District Court's judgment. (A. 14)[7]

ARGUMENT.

I.

Preface.

Plaintiffs' petition overlooks a crucial matter—that the trier of fact found that they had failed to prove the facts upon which their case rests. The focus of this brief in opposition will be upon that failure of proof.

The primary interest of the Chicago Housing Authority, its Commissioners and Executive Director in defending this unusual action is, and has been, to resist the baseless charges against, as the complaint alleges, "low income families of the kind that reside in housing provided, by the Chicago Housing Authority." (¶¶ 11, 12 Cts. I and II) and against the CHA which plaintiffs charge will select families with adverse social characteristics for scattered site public housing. (¶ 17, Ct. I, ¶ 22, Ct. II)

7. Reported at 524 F. 2d 225 (7th Cir. 1975).

Plaintiffs had to prove three basic facts: (1) their social characteristics, (2) the social characteristics of the type of people who reside in CHA housing, and (3) the negative impact of having CHA residents move into plaintiffs' communities by comparing the disparity of the social characteristics of the two groups. They failed. Therefore there is no factual foundation for their legal arguments.

II.

THE DISTRICT COURT'S FINDINGS OF FACT ARE NEITHER NOW BEFORE THIS COURT NOR ARE THEY CLEARLY ERRONEOUS.

Plaintiffs in their petition argue that the lower courts' findings in regards to HUD's actions under NEPA were clearly erroneous. (Petition pp. 24-27) However, what plaintiffs fail to realize is that the district court's decision was based on its findings that plaintiffs had failed to prove (i) the social characteristics of the plaintiffs; (ii) the social characteristics of the prospective scattered site public housing residents of CHA and (iii) the adverse impact of moving the latter into plaintiffs' neighborhoods. Although both courts below held that plaintiffs failed to prove their factual allegations, it is these same allegations of fact which plaintiffs now assume were proven. By innuendo, throughout their petition, plaintiffs invite this Court to engage in a *de novo* review of the evidence. (Petition pp. 1-27, in particular pp. 22, 25)

Plaintiffs intimate that the district court erred in not giving proper consideration to nor adopting their sociologists' opinions—the primary evidentiary basis of their proof. (Petition p. 19) But plaintiffs forget that:

> ". . . Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses . . ." Rule 52(a), F. R. Civ. P.

In applying the "clearly erroneous" test of Rule 52(a) the court of appeals below was mindful of the fact "that their function is not to decide the issues *de novo.*" *Zenith Radio Corp.* v. *Hazeltine Research Inc.*, 395 U. S. 100, 123, 89 S. Ct. 1562, 1576, 23 L. Ed. 129 (1969).

Both plaintiffs' sociologists assumed that the plaintiffs were of the middle or working class. However, neither had made any study of the social characteristics of the plaintiffs. All they did was to choose sample census tracts within which some of the plaintiffs resided. They then extracted from the 1970 Census data as to these particular census tracts to arrive at the social characteristics of the average person in those census tracts. (Tr. 353) They *assumed* that the individual plaintiffs possessed these very same social characteristics. (Tr. 357) No evidence was introduced about the individual plaintiffs' mean income, number of incomplete families, employment or unemployment or educational level from which these or any other experts could base an opinion. Yet, it was evidence of these very factors which plaintiffs' experts deemed crucial in the evaluation of social characteristics. (Tr. 348-9, 359, 434, 443)

As to the potential residents of the low income scattered site housing in the target sites, plaintiffs' experts also made a number of assumptions. First, they testified that based on CHA reports current residents of CHA had lower incomes and more incomplete families than the people in the target site sample tracts. (PX 43) With only these two factors at hand they then assumed that CHA tenants possessed other problems of "multi-problem" families—insufficient education, high unemployment and a propensity for violence. (Tr. 359) It was based upon this data and these assumptions that both sociologists (Tr. 357, 986, 1188, 1412) *further assumed* that the prospective tenants of scattered site public housing would also possess these same social characteristics. Yet, both admitted that they did not know the socio-economic class of these prospective tenants because they did not yet exist. (Tr. 1272, 1317, 1872)

Plaintiffs' sociologists were attempting to forecast the social characteristics and behavior of individuals based on generalization about groups of other people. However, the law knows that predicting the behavior of even one human being is an especially difficult, if not impossible task. *Cross* v. *Harris*, 418 F. 2d 1095, 1107 (D. C. Cir. 1969). Common sense suggests that the trial court was not bound to accept plaintiffs' sociologists assumptions and opinions and so does the law.

> "An expert may give his opinion based on assumptions stated by him. *However, if the assumptions needed to support the opinion are not proved, or at least testified to, and not otherwise taken to be true, the opinion is worthless.* See *International Paper Co.* v. *United States*, 5th Cir., in which we stated: 'Of course, opinion evidence may of itself be substantial enough to take a case to the jury. However, an opinion is no better than the hypothesis or assumption upon which it is based.' 227 F.2d 201, 205 . . ." *United States* v. *Cooper*, 277 F. 2d 857, 860 (5th Cir. 1960). (Emphasis added.)

See also *Rewis* v. *United States*, 503 F. 2d 1202, 1205-1208 (5th Cir. 1974) *reh. denied* 506 F. 2d 1386 (5th Cir. 1975) and *Bohus* v. *Board of Election Commissioners*, 447 F. 2d 821, 824 (7th Cir. 1971).

The obvious healthy skepticism of the trial judge in this case is supported not only by judicial precedent (and, of course, by common sense) but by scholars of sociology and social statistics.[8]

Indeed, one of plaintiffs' sociologists recognized that one may not infer individual behavior from the characteristics of a group.

> "When one makes an attribution of a group, say, for instance, as one would in any of these statistics in this exhibit you handed me on the table [PX 43], and say that, you know, a group is characterized in this way, its fal-

8. See, *e.g.*: Robert S. Lynd "Knowledge For What? The Place of Sociology in American Culture," pp. 39, 41; and John G. Peatman, Introduction to Applied Statistics, pp. 6, 7 Harper & Row, New York, 1963.

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licious to infer from a group characteristic to a prediction of individual behavior." (Tr. 1791)

The district court's conclusions are also supported by opinion testimony from CHA management officials[9] (the very people plaintiffs criticize HUD for not consulting, Petition pp. 16-17) that the CHA tenants do not have a greater propensity for physical or personal violence than persons such as plaintiffs claim to be, that, indeed 94 to 95% of CHA tenants do not have antisocial tendencies. And of course, the tenants to be selected for the scattered sites not yet built will be more intensively screened than the usual CHA tenant family. (Tr. 2324, 2386, 2537-2540, 2838, 2840-2842, 2370-2371)

Surely, in light of the foregoing and the record the finding of the district court that plaintiffs failed to prove their case cannot be said to be clearly erroneous.

The reasoned opinions of the two lower courts have rejected each factual and legal contention submitted by petitioners and the factual record demonstrates that the district court was correct in its conclusion that plaintiffs failed to prove their case. Since the lower courts concluded that plaintiffs failed to prove their factual allegations, we respectfully submit that the petition is not well founded and that certiorari should be denied, regardless of the questions of law raised.

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9. While this testimony came in as "offers of proof" they are in the record, were clearly admissible, and a successful party in the district court may sustain its judgment on any ground that finds support in the record. *J. E. Riley Inv. Co.* v. *Comr. of Internal Revenue Service,* 311 U. S. 55, 59, 65 S. Ct. 95, 85 L. Ed. 36 (1940); *Parmalee Transportation Co.* v. *Keeshin,* 292 F. 2d 794, 797 (7th Cir. 1961) *cert. denied,* 368 U. S. 944, 82 S. Ct. 376, 7 L. Ed. 2d 340 (1961).

CONCLUSION.

For all of the above reasons the Chicago Housing Authority Respondents pray that this Honorable Court deny the Petition for Certiorari submitted by Petitioners.

Respectfully submitted,

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APPENDIX.

Excerpts of Testimony by Samuel J. Rice:

"Q. Now, Mr. Rice, based upon your education your 21 years with the Chicago Housing Authority that you have described, including your seven years as Chief of Community and Tenant Relations for the Chicago Housing Authority, and your regular examination of CHA annual reports such as are in evidence as Plaintiffs' Exhibits 40, do you have an opinion as to the potential incidence for property violence and personal violence among the kind of family that resides in Chicago Housing Authority projects as compared with the potential incidence of such conduct among all the neighbors that you have had since you moved to Chicago in 1947?" (Tr. 2382-83)

"A. No more, no less." (Tr. 2386)

Excerpts of Testimony by Wendell L. Johnson, Jr.:

"Q. Now, based on your experience managing the Cabrini Green project for these years, do you have an opinion as to the percentage of families residing in that project, members of which have engaged either in physical violence or property damage and vandalism or gang delinquency or a combination of these characteristics?" (Tr. 2833)

"A. 10 to 12 percent." (Tr. 2838)